Government
Publications

Department of Finance Canada
Ministère des Finances Canada

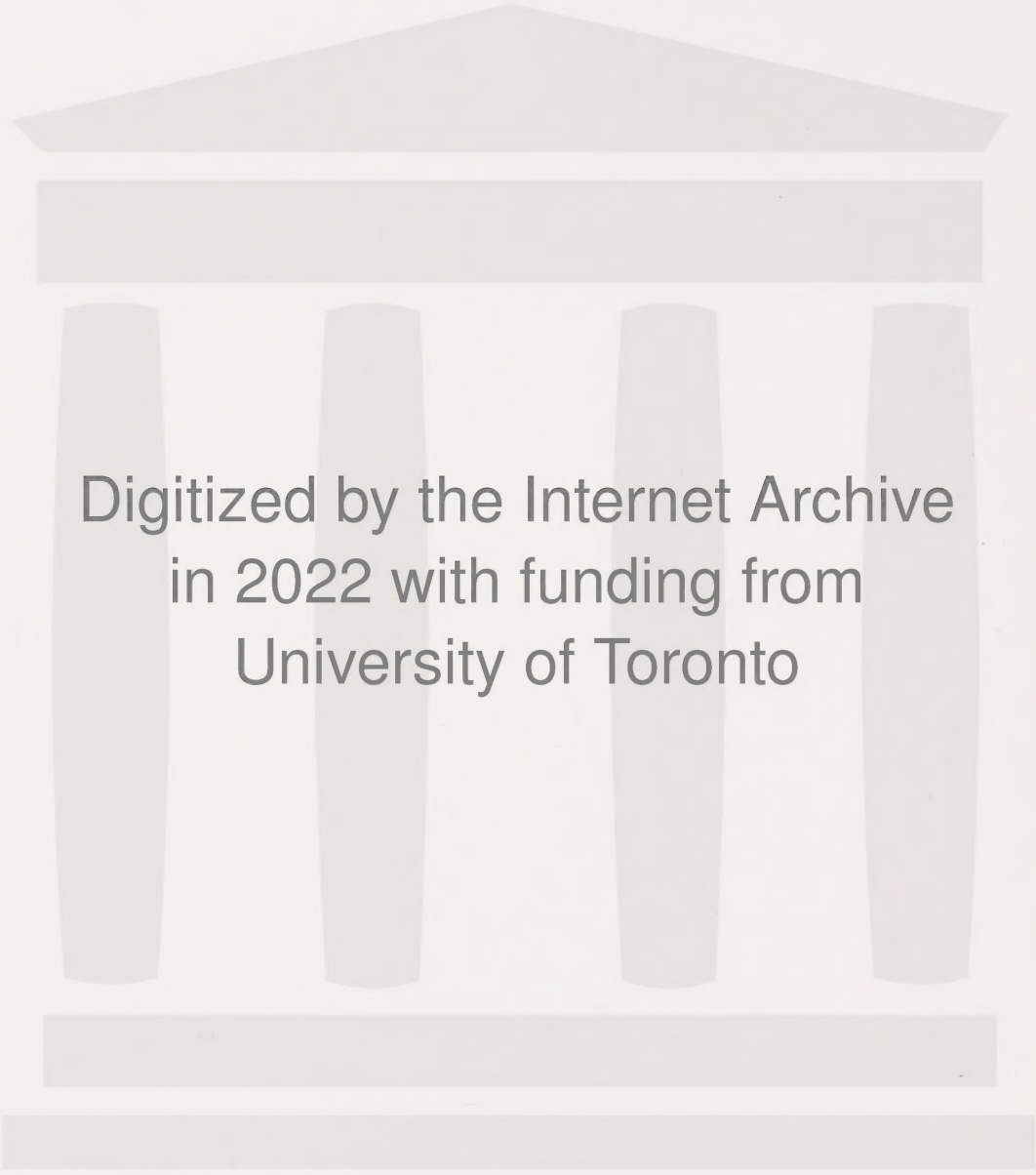
CA 1
FN
-2006
F 33

2006 Financial Institutions Legislation Review:

Proposals for an Effective and Efficient Financial Services Framework

June 2006

Canada

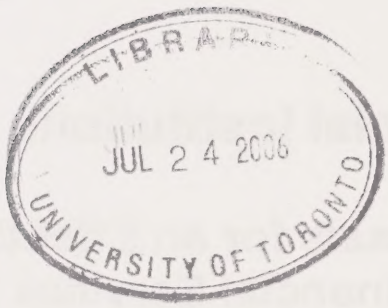

Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

https://archive.org/details/31761115547176

2006 Financial Institutions Legislation Review:

Proposals for an Effective and Efficient Financial Services Framework

June 2006



Copies of this document may be obtained from the:

Distribution Centre
Department of Finance Canada
Room P-135, West Tower
300 Laurier Avenue West
Ottawa, Ontario K1A 0G5
Telephone: (613) 995-2855
Facsimile: (613) 996-0518

Also available on the Internet at www.fin.gc.ca

Cette publication est également disponible en français.

Cat. No.: F2-178/2006E
ISBN 0-662-43016-6

Table of Contents

Introduction

The financial services sector is one of the key foundations on which any modern industrial economy rests. Its significance to the Canadian economy goes far beyond its own direct contribution to real output. The sector plays a unique and pervasive role in ensuring financial stability, safeguarding savings and fuelling the growth that is essential to the success of the Canadian economy more broadly.

The Government of Canada is responsible for ensuring that the regulatory framework allows financial sector participants to operate as efficiently and effectively as possible, while maintaining the safety and soundness of the sector, which serves and protects consumers and businesses. The regular five-year review of the financial sector framework is an important tool in meeting these responsibilities.

A consultation process leading to the current review of the financial institutions statutes was launched in 2005. In response to that invitation to express their views, a large and representative group of stakeholders provided comments on the 2006 review of the financial sector statutes. Over 50 submissions were received from various stakeholders including industry associations, financial institutions, consumer groups and individual Canadians.

Generally, stakeholders' input suggests that this review offers the opportunity to refine the legislative framework, but that no major overhaul is needed. The Government agrees with this general assessment.

Overall, stakeholders agreed that some steps could be taken to enhance the interests of consumers, increase legislative and regulatory efficiency, and adapt the framework to new developments. Many stakeholders also made specific proposals for technical amendments. Specifically:

- There was general support for
  - reviewing the disclosure provisions of the financial institution statutes,
  - enhancing consumer protection for all forms of electronic transactions,
  - simplifying the foreign bank entry regime,
  - improving the legislative framework for credit unions,
  - improving the regulatory approval regime, and
  - allowing for electronic cheque imaging in order to gain efficiencies in the payment and clearing system (some consumer representatives, though supportive, asked that the Government ensure that consumers truly see benefits from cheque imaging).

- Consumer representatives were highly supportive of the proposal to establish maximum hold periods, while financial institutions made a case for greater transparency in disclosure efforts and asked government to wait for full implementation of cheque imaging before setting particular limits on cheque holds.

- A range of views was expressed on a proposal to remove the current insurance requirements for residential mortgages exceeding 75 per cent of the property value.

- While a proposal to repeal the *Bank Act* special security regime received some support, banking industry stakeholders identified issues with the elimination of the existing regime.

Responding to these contributions, this paper outlines the Government's proposals aimed at achieving three key objectives:

1. enhancing the interests of consumers,
2. increasing legislative and regulatory efficiency, and
3. adapting the framework to new developments.

Together, these will contribute to a modern and competitive financial sector framework in which businesses of all sizes and consumers will continue to be well served. Proposals for technical amendments to the framework are described in the Technical Annex.

Individuals and stakeholders can provide comments on the proposals set out in this paper until July 21, 2006.

An Effective and Efficient Framework: Proposed Changes

The following sets out the legislative and regulatory proposals that the Government intends to bring forward in the context of the 2006 review of the financial sector statutes.

Enhancing Interests of Consumers

The framework for the financial sector allows financial institutions to grow and prosper in meeting the needs of consumers and small and medium-sized businesses (SMEs). Continued globalization, consolidation and technological innovation make for a complex and evolving business environment. While consumers benefit from innovation, it becomes more difficult for them to make informed choices in the marketplace due to the greater complexity of financial products and the ways in which these products are delivered. It is important to ensure that consumer interests are adequately protected.

The best approach to looking after consumers' interests is founded on two pillars: competition and disclosure. Competition provides more choices to consumers, and allows them to find financial products and services that best suit their individual goals and needs at competitive prices. Disclosure ensures that consumers and SMEs have the relevant information to make the best decisions in light of the choices available to them. The proposed changes to the framework in the context of this review are consistent with that approach.

Improving Disclosure to Consumers

The range of financial services and products offered to consumers continues to evolve. The disclosure regime needs to contemplate the different types of products and services in the marketplace to be effective. The Government proposes the following changes to keep the disclosure rules up to date.

a. *Disclosure Regime for Deposit-Type Investment Products*

Currently, there are several legislative and regulatory disclosure requirements that banks must follow when they open an account with a customer. However, while deposit accounts (e.g. savings or chequing accounts) and deposit-type investment instruments (e.g. GICs and term deposits) do share some basic characteristics, there are several important differences that are either not currently addressed under the disclosure regime or render several existing disclosure requirements irrelevant or even inappropriate. As such, there is concern that consumers may not receive the information they need to make informed choices when they purchase deposit-type investment products.

The Government proposes to develop a new disclosure regime for deposit-type investment products to ensure that consumers have appropriate disclosure that is specific to the type of product they are purchasing. The new regime will address disclosure requirements relevant to the products in question, such as disclosure of the term of the product, information on the return, and disclosure of any penalties for early withdrawal.

b. *Disclosure of Information on the Administration Fees of Deposit-Type Registered Plans*

Federally regulated deposit-taking institutions must disclose all charges applicable to a deposit account and provide notice of increases in these charges. This provides customers with essential information to assist them in managing their deposit accounts.

Financial institutions in some cases charge fees to transfer registered plans to another institution and to open a registered plan. However, some institutions have argued that these fees do not need to be disclosed because they are applicable to registered plans and not to deposit accounts.

The Government proposes to amend financial institutions legislation to explicitly require the disclosure of fees in respect of deposit-type registered plans offered by federally regulated financial institutions. This decision will assist customers to make informed decisions about their deposit-type registered plans.

c. *Harmonization* of Online and In-Branch Disclosure Requirements

Currently, federally regulated financial institutions must disclose in their branches information on the amounts charged for services normally provided to their customers and the public, the prohibition on coercive tied selling, and the requirement to provide access to basic banking services. However, consumers and SMEs are increasingly choosing to manage their finances online and these disclosure requirements do not extend to the online world. Sufficient information must be available to help these consumers make informed financial decisions.

To ensure that consumers have sufficient information, the Government proposes to harmonize online and in-branch disclosure requirements to allow consumers to compare products more easily and ensure adequate disclosure is provided to customers conducting transactions online.

d. *Disclosure of Complaint Handling Procedures*

Currently, federally regulated financial institutions are required to have procedures and staff in place to deal with complaints from consumers and SMEs who have requested or received products or services from their institution. These procedures (which typically include an internal ombudsman) must be filed with the Commissioner of the Financial Consumer Agency of Canada (FCAC) and must be provided to consumers when they open a deposit account.

However, there are currently no requirements to ensure that consumers have access to information on these procedures on an ongoing basis. In addition, consumers who do not open an account but rather obtain other products and services like a mortgage do not receive any information on complaint handling procedures. There is concern that consumers may not be able to readily obtain the necessary information on the proper complaint handling procedures when a complaint with their financial institution arises.

The Government proposes to amend the financial institutions statutes to require financial institutions to make their complaint handling procedures publicly available - in branches and online - for all consumers to access at any time.

e. *Disclosure in the Cost of Borrowing Regulations*

The Government is proposing to make two changes to the *Cost of Borrowing Regulations* to provide a higher standard of consumer protection. These changes will be discussed with provincial and territorial governments as required under the Agreement on Internal Trade.

i) Disclosure to Co-Borrowers

Under the current *Cost of Borrowing Regulations*, federal financial institutions must provide borrowers with disclosure documentation when entering into a loan contract. However, current wording in the regulations is not specific about how disclosure is to be provided in a situation where two or more people are signatories to a loan contract (e.g. co-borrowers).

Currently, federal financial institutions take different approaches to providing disclosure to co-borrowers. Some provide disclosure documents to all borrowers who sign the loan agreement, while others provide disclosure only to the person deemed the primary borrower. In a situation where only the primary borrower receives disclosure, there is concern that the co-borrowers might not be aware of their rights and obligations under the loan agreement.

The Government proposes to make the necessary amendments to the requirements in the *Cost of Borrowing Regulations* to clarify that all co-borrowers must receive the required disclosure documentation, but that expressed consent may be given by co-borrowers for a single set of documents to be sent in the name of all signatories to a loan agreement to a single address.

ii) Disclosure Statements for Credit Agreements

Under the current *Cost of Borrowing Regulations*, federal financial institutions are required to provide borrowers with a disclosure statement that includes a specific list of required information items. These statements may be provided either as a separate document or as part of the broader credit agreement. However, the regulations do not specify how the information is to appear if it is included in the longer credit agreement.

When disclosure statements are included as part of a credit agreement, the required disclosure information items are not always presented in a consolidated manner. There is, therefore, concern that consumers may find it difficult to identify and locate the key pieces of required disclosure information they need to make informed decisions about the product they are purchasing.

The Government intends to amend the regulations to clarify that, if an institution chooses to include their disclosure statement as part of a credit agreement, the institution must do so in a format whereby the pertinent information can be easily identified by the borrower, either by presenting it in a consolidated manner or by providing an accurate summary of the required information.

Electronic Transactions

The *Canadian Code of Practice for Consumer Debit Card Services* was established over 13 years ago as a voluntary approach to ensuring proper disclosure to consumers who use debit cards. Since then, there has been significant growth in the use of other electronic methods used by Canadians to conduct financial transactions that are not expressly covered in the Code. For example, there has been an increase in the use of Internet banking and telephone banking, and the emergence of stored value cards and new online payment options such as email money transfers and online debit transactions. The advances in payment technology and new payment channels raise consumer protection issues regarding requirements for disclosure, authentication, liability and dispute resolution services for these new products. A voluntary consumer protection approach could provide a similar result as a legislative regime. Such an approach would increase flexibility to make changes in a timely manner to adapt to a rapidly changing marketplace, as well as including as broad a spectrum as possible of service providers.

The Government will encourage the adoption of a voluntary consumer protection regime to cover additional forms of electronic transactions, building on the work undertaken to establish the code for debit cards. In the coming months, consumer and industry stakeholders will be invited to provide views on elements to be included in a new electronic transactions code. The Financial Consumer Agency of Canada would be responsible for monitoring adherence to the code by federally regulated financial institutions.

Cheque Hold Periods

At the time of opening a new retail deposit account, banks are currently required to disclose to consumers the maximum time period for which they would hold a cheque. For most large banks, the maximum hold period on cheques deposited with tellers is ten days. The banks note that these holds are an important element of their risk management process.

While the Government recognizes the importance of cheque hold periods for risk management, a concern remains about the length of time that consumers and SMEs may be subject to hold periods. Cheque holds not only affect consumers who need to access funds to pay their bills, but also small and medium-sized businesses that need to pay employees and operate their businesses out of the funds they deposit. Also, the government would like to ensure that the efficiencies that will be gained through the Canadian Payment Association (CPA) initiative to change the payments system to facilitate electronic cheque imaging (see page 14), will be shared by all users of the payments system, including consumers.

Therefore, to ensure that cheque hold periods are appropriate, the government is proposing to seek regulation-making authority that would limit cheque hold periods. However, the Government is willing to consider a voluntary commitment concerning limits on cheque holds periods, as has been done with respect to low-fee accounts, in place of proceeding at this time with regulations. This commitment would be monitored and reported on by the Financial Consumer Agency of Canada to ensure that it is respected.

Discussions with the banking community resulted in an undertaking to reduce the maximum hold period immediately to seven days and reduce it further to four days once electronic cheque imaging is fully implemented. This would be a significant improvement over the current maximum hold period of 10 days or more and a major step forward for consumers.

The Government proposes to amend the *Bank Act* to provide the authority to make regulations to limit cheque hold periods. The Government will finalize an agreement with the banking industry to reduce the maximum hold period immediately to seven days and reduce it further to four days once electronic cheque imaging is fully implemented. This agreement on a self-regulatory approach removes the need to introduce regulations at this time.

Increasing Legislative and Regulatory Efficiency

Efficient financial institutions are essential to creating the right environment for savings and investment in Canada and to enhancing our standard of living. The regular review of the financial sector statutes allows the Government to amend the framework as necessary so that financial sector legislation and regulation continue to be effective and efficient. The following sets out key areas that have been identified in the context of this review to achieve increased legislative and regulatory efficiency.

Foreign Bank Entry

There is general satisfaction with the core principles of the foreign bank entry framework: encouraging competition through entry and maintaining a level playing field. Foreign banks have considerable flexibility to do business in Canada. However, some aspects of the current regulatory mechanisms have been criticized as being complex and burdensome.

An area of significant concern has been the regulatory burden placed on “near banks,” i.e. foreign entities that are not regulated as banks in their home jurisdiction, but provide banking-type services (such as consumer loans). In particular, the ministerial entry approval that near banks must obtain to undertake unregulated activities is regarded as an unnecessary and costly requirement, which results in delayed transactions and provides little benefit.

To simplify the foreign bank entry framework and reduce burden, the Government proposes to narrow the framework to focus on real foreign banks. It proposes to remove near banks from the foreign bank entry framework and eliminate the entry approval for near banks undertaking unregulated financial services. Other technical changes will also be made to further simplify the mechanics of the framework.

Improvements to the Regulatory Approval Regime

Ministerial approvals are currently required for a broad range of financial sector transactions related to market entry, structure and competition, as well as financial institution ownership. Transactions for which the Superintendent's approval is required relate to prudential and safety/soundness issues.

There are, however, still transactions that the Minister reviews that are routine and do not raise significant policy issues. This legislative review provides an opportunity to streamline the regime to ensure that transactions are dealt with more expeditiously. For example, the current regime requires two ministerial approvals for certain transactions involving fundamental changes (e.g. liquidation, amalgamation). This review would result in the initial authorization required for fundamental changes being transferred from the Minister to the Superintendent.

For transactions involving information technology and other ancillary services for which ministerial approval is required, a deemed approval will be introduced to further enhance the efficiency of the process.

The Government proposes to streamline the approval regime in such areas as liquidation, discontinuance, amalgamation, investments, name changes, transfers of business within corporate groups, reinsurance agreements, and large dividends. Certain Superintendent approvals will also be removed. These changes are described in the Technical Annex.

Credit Unions and Caisses Populaires

Cooperative credit associations are federally incorporated financial institutions that can provide products and services to their members across provincial boundaries. At present, a minimum of 10 credit unions is needed to establish an association under the *Cooperative Credit Associations Act* (CCAA). However, in light of the new commercial possibilities offered by retail associations and the continued consolidation in the credit union system, the current requirement places too high a threshold for new entry. A lower requirement would add flexibility to the federal framework for the credit union system, improve the system's capacity to adapt to new developments and enable it to better serve consumers and SMEs.

In addition, the introduction of the first retail association revealed the need to provide for a deposit insurance opt-out regime similar to other federal deposit-taking institutions. Currently, associations that do not want to accept retail deposits are still required to be a member of the Canada Deposit Insurance Corporation (CDIC), which imposes an unnecessary burden on these entities.

The Government proposes to decrease to two the number of credit unions required for the incorporation of an association. The Government also proposes to introduce a deposit insurance opt-out regime for associations that are not accepting retail deposits, similar to provisions available to other financial institutions.

Marine Insurance

Currently in Canada, the *Marine Insurance Act* and the *Marine Liabilities Act* provide the broad federal legal framework for marine insurance contracts and marine liability. However, neither piece of legislation addresses issues regarding the manner in which companies that offer marine insurance are regulated, both from a prudential and market conduct standpoint.

Some provinces have indicated that the federal government should play a larger role in the oversight of the marine insurance sector. Moreover, it was also noted that having a clear federal oversight body for marine insurance could facilitate new entrants into the marketplace and improve competition.

During discussions with provincial representatives, it was agreed that it would be in the best interests of consumers of marine insurance and the industry if the federal government were to provide marine insurers with the option to register with the Superintendent of Financial Institutions and be subject to federal prudential oversight, as is currently done for other types of insurance. It was also agreed that, given the provinces' particular expertise, they would continue providing market conduct oversight for the sector.

The Government proposes to amend the relevant sections of the *Insurance Companies Act* to give insurers that exclusively provide marine insurance the option to be subject to federal prudential oversight.

Residential Mortgages Exceeding 75 per cent of the Property Value

Mandatory insurance for high loan-to-value (LTV) ratio mortgages was introduced over 30 years ago as a prudential measure to ensure that lenders are protected against fluctuations in property values and associated defaults by borrowers. The last time the threshold was increased was following the Porter Commission in 1965, when it was raised from 66.7 per cent to 75 per cent.

The market place has changed since then:

- The risk management practices of lenders have improved significantly,
- Regulatory risk-based capital requirements have been implemented,
- Capital markets have changed and matured (e.g. securitization), and
- The supervisory framework for federally regulated financial institutions has been strengthened significantly.

The restriction may therefore no longer serve the same prudential purpose. As a result, a statutory requirement for insurance set at 75 per cent LTV may mean that certain consumers are paying more for their mortgage than is justifiable on a prudential basis. However, the complete and immediate elimination of the restriction might have undesirable effects for lenders and borrowers. The Government has concluded that below 80 per cent LTV, insurance need not be required by statute and the decision could be left to the discretion of the lender. This would be consistent with practice in other jurisdictions such as the U.S. and Australia, where most lenders do not require insurance unless the LTV ratio exceeds 80 per cent.

The Government proposes to raise the loan-to-value ratio requiring mortgage insurance from 75 per cent to 80 per cent at this time. Further increases to this threshold will be examined in future five-year legislative reviews.

Reducing Compliance Costs for Reinsurers

The Financial Consumer Agency of Canada (FCAC) is responsible for ensuring that all federally regulated financial institutions respect the consumer provisions in the federal statutes. The regulatory oversight by the FCAC includes the requirement to have dedicated procedures and personnel in place to address consumer complaints, as well as to belong to a third-party dispute resolution system. Such requirements, while essential for ensuring that consumers can obtain redress of their complaints and concerns, imposes a needless compliance burden on reinsurers, as they do not deal with individuals or small businesses.

The Government proposes to reduce regulatory burden by exempting reinsurers from FCAC oversight, including assessments and the dispute handling requirements.

Adapting the Framework to New Developments

The rate of change in the financial services sector has increased in recent years. Financial institutions have to respond to developing trends such as globalization, convergence, consolidation and technological innovation. This often results in the creation of new products and services and innovative ways of doing business. The Government needs to ensure that the framework is up to date to allow institutions to evolve and prosper while protecting consumers and SMEs adequately and maintaining the overall safety and soundness of the financial system.

Canadian Payments Systems and Electronic Cheque Imaging

Canadian Payments Association (CPA) members currently process about 1.2 billion paper items, mostly cheques, annually valued at $3.1 trillion. Currently, the process of clearing a cheque includes the physical delivery of the cheque to the paying or issuing financial institution in order for it to decide whether or not to make the payment. This physical delivery of cheques is required by the *Bills of Exchange Act*. As a result, most cheques are cleared and settled by CPA members using processes that are more labour-intensive, time-consuming and costly than necessary, given technological developments.

Electronic cheque imaging would allow financial institutions to replace the physical delivery of paper cheques with the electronic transmission of cheque images and information. Financial institutions would take an image of the front and back of each cheque, electronically capture other information and maintain the paper cheque in inventory for a period of time after the image is taken. This would allow the financial institution to send cheque images electronically to other financial institutions without having to physically transport the paper cheques.

Cheque imaging would result in significant efficiency gains, saving time and resources currently dedicated to the transport of the cheques. As noted previously, the Government intends to take these efficiencies into account in discussions with financial institutions with regard to a voluntary commitment to limit cheque hold periods, to make sure consumers benefit from the initiative.

A number of technical changes to the *Canadian Payments Act* (CP Act) and the *Payment Clearing Settlement Act* (PCSA) have also been identified to improve the operation and efficiency of the payment system. These changes are detailed in the Technical Annex.

The Government proposes to amend the *Bills of Exchange Act* to provide an enabling framework for the introduction of electronic cheque imaging by allowing financial institutions to use electronic cheque images in the cheque clearing system.

Special Security Regime

Canadian banking legislation originally restricted banks from taking security interests in personal property to secure their loans under provincial or territorial legislation. Parliament then created the federal security regime in 1890. However, even when banks were released from the prohibition against taking provincial or territorial security, banks still felt that the *Bank Act* regime was better than the provincial and territorial regimes, since those regimes were viewed to be outdated, confusing to use and not well harmonized across jurisdictions.

While the development of improved provincial and territorial security regimes in recent years provides some opportunities, removing the *Bank Act* special security (BASS) regime would mean that banks would lose the benefit of a national regime, potentially reducing their security rights. Removing or significantly limiting the *Bank Act* special security regime might also affect the availability and cost of credit to borrowers.

There are opportunities to improve the operation of the BASS registry without changing the nature of the regime, including increasing the use of electronic communication and updating the outdated fee structure for BASS registry services.

Given the benefits of a national regime and the uncertainty with respect to potential market outcomes resulting from its removal, the Government does not propose to alter the *Bank Act* special security regime at this time. However, the Government proposes to proceed with changes to the administration of the regime, in order to improve its efficiency. These changes are described in the Technical Annex.

Ownership Regime Thresholds

In 2001, a new size-based ownership regime for Canadian financial institutions was implemented. Under the new regime, the equity threshold above which a bank is required to be widely held was set at $5 billion to capture the largest banks whose potential failure would have the greatest impact on the financial system and the economy. Medium-sized banks with equity between $1 billion and $5 billion can be closely held, but are subject to a 35 per cent public float requirement (unless a ministerial exemption is obtained). The threshold for small banks, which can be wholly owned by a single shareholder, was set at $1 billion to encourage new entrants.

The policy framework required all former Schedule I banks to remain widely held, but provided for the possibility of a recategorization of small and medium-sized Schedule I banks to allow them to become closely held. The *Recategorization Guidelines for Former Schedule I Banks With Equity of Less Than $5 Billion*, released in 2001, set out the framework under which these banks could apply to become closely held.

The financial services sector has grown, along with the rest of the economy, while the thresholds have remained static. This means that although the relative sizes of the various financial institutions have remained stable, the original thresholds no longer reflect the policy intent of the regime.

An increase of the thresholds would reflect the growth of the sector and preserve the policy intent of the size-based ownership regime.

The Government proposes to increase the large bank equity threshold from $5 billion to $8 billion and increase the $1 billion equity threshold for small banks, trust and loan companies, and insurance companies to $2 billion. As a consequence, the recategorization guidelines will also be revised to reflect the new higher equity thresholds.

Next Steps

The Government will now proceed to draft legislation to implement the policy proposals laid out in this paper. Any additional comments on the implementation of the proposals set out in this paper are invited and should be forwarded by July 21, 2006, to:

Gerry Salembier
Director, Financial Institutions Division
Financial Sector Policy Branch
Department of Finance
L'Esplanade Laurier
15th Floor, East Tower
140 O'Connor Street
Ottawa, Canada
K1A 0G5

You can also email your comments to finlegis@fin.gc.ca.

Technical Annex

This annex provides a description of the main technical proposals the Government is bringing forward as part of the financial institutions legislative review. It is not an exhaustive list. There will be a number of other technical amendments that include cross-referencing, changes to remove inconsistencies, English/French harmonization, lightening the administrative burden, codifying common-law standards, clarifying ambiguous language, updating terminology, and other amendments that relate to the structure of the Acts or that are non-substantive in nature.

Legislative Streamlining

Subject: Discontinuance of Financial Institutions

Amendment: Provide authority in the *Bank Act,* the *Trust and Loan Companies Act,* the *Cooperative Credit Associations Act,* and the *Insurance Companies Act* to allow entities to discontinue from their host federal financial institution (FI) statute and continue under any other of these federal FI statutes, as well as the *Canada Business Corporations Act*, subject to appropriate conditions and the approval of the Minister of Finance.

Explanation: This measure will harmonize existing discontinuance rules, thereby providing entities with a clear and consistent framework of discontinuance rules across FI statutes.

Subject: Multiple Ministerial Approvals of Fundamental Changes

Amendment: Allow for a ministerial approval to give effect to multiple fundamental changes in a transaction.

Explanation: This will streamline and reduce the number of approvals in respect of fundamental change transactions.

Subject: Use of Bank Name

Amendment: Transfer all approvals relating to use of bank name from the Minister of Finance to the Superintendent of Financial Institutions, and clarify the rules relating to permitted uses of the term “bank”, bank names and logos

Explanation: As approvals relating to use of bank name do not have broad public policy implications, they should be made by the Superintendent. Clarifying the rules relating to permitted uses will fill in the gaps in the current framework.

Subject: Representative Offices

Amendment: Clarify that the Superintendent may specify the name of a representative office of a foreign bank.

Explanation: Where there is a risk of confusion the Superintendent may specify the name of a representative office of a foreign bank.

Subject: Nature of Deemed Acting-in-Concert Provision

Amendment: Clarify the nature of persons acting together in respect of the ownership rules.

Explanation: This change will provide certainty as to whether the investors in a financial institution meet eligibility requirements in the ownership regime.

Subject: Status of Former Schedule I Bank or Converted Company

Amendment: Clarify that a former Schedule I bank or a converted company does not lose that status because of a fundamental change.

Explanation: This amendment will clarify that the resulting entity after a fundamental change is still a former Schedule I bank. The same change will be made for a converted company.

Subject: Rolling Over Between Categories of Investment

Amendment: Clarify that an investment initially acquired as a particular category of investment can continue to be held under another category of investment, as long as the approval requirements and other conditions, if any, are met.

Explanation: This will give financial institutions greater flexibility under the investment framework by allowing an investment to be rolled over from one category to another.

Subject: Investment in Mutual Fund Management Entities

Amendment: Allow a federal financial institution to own a mutual fund management entity that conducts both management and trustee activities under the condition that it is permitted to do so by a province, and where an appropriate governance framework is in place, including measures to ensure the independence of the trustee functions.

Explanation: This will allow financial institutions to invest in these entities while ensuring that appropriate governance measures are in place.

Subject: Investment in Closed-end Funds

Amendment: Allow a financial institution to invest in closed-end funds.

Explanation: This will provide financial institutions with the opportunity to invest in closed-end funds.

Subject: Loan Workouts

Amendment: Give financial institutions the right to acquire ownership interests in an unincorporated entity that holds the ownership interests of another entity that has defaulted, in the context of loan workouts.

Explanation: This will fill a gap in the loan workout rules for situations where the holding entity is not an incorporated entity.

Subject: Filing Deadline of Annual Returns

Amendment: Allow deadlines for the filing of annual returns with the Office of the Superintendent of Financial Institutions to be specified by the Superintendent.

Explanation: This will ensure requirements are consistent across the legislation and recognizes that the time frames currently specified in some cases are outdated.

Subject: Exemption from Superintendent Approval for the Acquisition of Certain Entities

Amendment: Clarify that the existing exemption from approval for the acquisition of control of entities that engage in the holding of shares and ownership interests of permitted investments applies only if the entity is solely limited to these activities.

Explanation: This will clarify the scope of the existing exemption.

Subject: Temporary Investments

Amendment: Allow foreign banks to hold temporary investments in non-permitted entities for two years without ministerial approval, like Canadian banks.

Explanation: This will provide foreign banks with the same flexibility to make temporary investments as Canadian banks.

Subject: Access to Automated Banking Machines (ABMs)

Amendment: Allow foreign banks or entities associated with a foreign bank to make arrangements with privately run ABM networks in Canada so as to provide access by non-resident customers to their foreign accounts.

Explanation: This will provide customers of foreign banks temporarily in Canada with access to privately run networks of ABMs operating in Canada.

Subject: In-house Specialized Financing

Amendment: Allow foreign banks to directly engage in specialized financing activities without having to establish a separate Canadian entity to hold the investments.

Explanation: This will provide foreign banks with the same opportunities for engaging in specialized financing as is available to Canadian banks.

Subject: Funding Restrictions on Foreign Banks

Amendment: To clarify that the exceptions from the funding restrictions in the foreign bank entry framework do not apply to unregulated financial branches of foreign banks.

Explanation: To alleviate the administrative problems associated with interpreting the funding restrictions in the foreign bank entry framework, the amendment will clarify that the exceptions to the funding restrictions apply only to commercial branches. Thus, unregulated branches cannot offer financial services or engage in funding in Canada.

Subject: Change of Name of Financial Institutions

Amendment: Give the Superintendent authority to amend letters patent with respect to the name of a financial institution, the place in Canada where its head office is situated, and the date of its incorporation.

Explanation: Changes of this nature are relatively routine and generally do not have policy implications that would require approval by the Minister of Finance.

Subject: Change of Name of Foreign Insurance Companies

Amendment: Remove the requirement for foreign insurance companies to publish their intention to change their name in the *Canada Gazette* and in newspapers.

Explanation: Foreign insurance companies are required to publish their intention to change their name in the *Canada Gazette* and in a newspaper of general circulation. In contrast, domestic insurance companies do not have such notification requirements. This amendment will ensure similar treatment regarding name change notification for foreign and Canadian insurance companies.

Subject: Investment Counselling and Portfolio Management

Amendment: Clarify that a foreign bank can establish a regulated securities branch in Canada that engages only in the business of investment counselling and portfolio management.

Explanation: This change will provide foreign banks with the same opportunities for engaging in investment counselling and portfolio management as are available to Canadian banks.

Subject: Investment in Foreign Entities

Amendment: Clarify that a foreign bank can have a holding company that owns both domestic and foreign entities. Clarify that a foreign bank can also have a separate holding company to own limited commercial entities.

Explanation: This will provide foreign banks with the same opportunities for investments in holding companies as are available to Canadian banks. As well, it recognizes that foreign banks may want to own limited commercial entities through a holding company.

Subject: Information Returns

Amendment: Replace requirement that a foreign bank provide financial statements for its affiliates doing business in Canada with a streamlined information return.

Explanation: This will streamline the information that a foreign bank is required to provide on its operations in Canada.

Subject: Asset Transfers

Amendment: Streamline certain asset transfer approvals. For example, provide flexibility to the Superintendent to approve a series of similar transactions subject to terms and conditions. Remove duplicate Superintendent asset transfer approvals if a related-party approval is already required.

Explanation: Certain asset transfer transactions are routine and have limited prudential impact on the entities involved. Pre-approval of such transactions would provide regulatory relief. Further, OSFI has other supervisory tools to address any prudential concerns associated with asset transactions.

Subject: Data Processing Outside Canada

Amendment: Eliminate Superintendent approval for processing information or data outside of Canada.

Explanation: In the vast majority of cases, this approval does not involve prudential issues for financial institutions. Furthermore, OSFI has other supervisory tools available to address those situations where this activity might give rise to prudential concerns.

Subject: Large Dividends and Notice to Superintendent

Amendment: Eliminate Superintendent approvals for large dividends. In addition, advance the timing of the notice to the Superintendent in respect of dividend payments.

Explanation: OSFI has a number of supervisory tools available to address any prudential concerns associated with large dividend payments, and can use these tools to address any inappropriate payments. However, to ensure the effectiveness of this regime, OSFI needs to receive timely notification of proposed dividend payments (i.e. 10 days before dividends are declared).

Subject: Reductions in Stated Capital

Amendment: Eliminate Superintendent approval for reducing stated capital due to certain accounting changes.

Explanation: Certain accounting changes (e.g. reclassifications) can affect stated capital for a financial institution even if there is no return of capital to shareholders. Such changes do not represent a prudential concern.

Subject: Classes of Insurance

Amendment: Update references in the *Insurance Companies Act* to classes of insurance (e.g. remove unnecessary classes) and amend, as appropriate, sections referring to those classes.

Explanation: The schedule of classes of insurance in the *Insurance Companies Act* will be amended to update the list. For example, a project between insurance regulators and insurance industry associations has resulted in a recategorization of the classes of insurance.

Subject: Termination of Insurance Business for Foreign Insurance Companies

Amendment: Eliminate Superintendent approval to authorize the Trustee to release assets vested in trust for a foreign company to use for the purpose of transferring outstanding policies in Canada.

Explanation: A foreign insurance company wishing to withdraw from Canada requires multiple approvals. The approval to authorize the Trustee to release vested assets is not required because it duplicates another Superintendent approval to release the remaining assets of foreign insurance companies in Canada.

Subject: Use of Name of Affiliated Entities

Amendment: Eliminate Superintendent approval for financial institutions to use the name of an affiliated entity, provided the affiliated entity consents to the use of its name.

Explanation: This approval duplicates other approvals for incorporation or change of name.

Subject: Return of Seed Money for Segregated Funds

Amendment: Provide an exemption from the requirement for Superintendent approval for transfers from segregated funds where the withdrawal relates to the removal of seed money.

Explanation: Insurance companies are subject to liability and capital requirements for segregated fund guarantees, which provide substantial security for segregated fund contract holders. Therefore, the approval for withdrawal of seed funds is no longer necessary.

Subject: Reinsurance Approvals, Transfers and Purchases of Policies

Amendment: Remove the ministerial approval for "out of the ordinary course of business" indemnity reinsurance transactions, transfers and purchases of policies. For assumption reinsurance transactions: a) remove the ministerial approval requirement for companies assuming policies; and b) shift the approval from the Minister to the Superintendent for all transactions, except in the case of a Canadian company ceding all or substantially all of its policies.

Explanation: Since these approvals were introduced, OSFI has put in place risk-based capital rules and other tools that address prudential issues associated with reinsurance transactions. In situations where the transaction is tantamount to a fundamental change, the Minister's involvement will be retained (e.g. cessions of all insurance business on an assumption reinsurance basis).

Subject: Provincial Agencies for *Bank Act* Special Security

Amendment: Update the *Bank Act* special security (BASS) provisions referring to provincial agencies/offices.

Explanation: BASS provisions require registry users to deal with specific provincial agencies, which results in the creation of separate provincial registries. This change will make searches of the BASS registry more efficient.

Subject: Operations of *Bank Act* Special Security Registry

Amendment: Amend the *Bank Act* special security provisions to move operational and certain technical aspects of the registry from legislation to regulations.

Explanation: Operational requirements for the registry have changed over time, due to factors such as technological progress. For example, there is increasing demand from users for electronic communications. The current need to register paper-based notices of intention limits options available in the operation of the registry. Moving these aspects of the registry from legislation to regulations will allow the government to adapt the registry to evolving operational requirements.

Subject: Fee Schedule for *Bank Act* Special Security Registry Services

Amendment: Update and simplify the existing fee schedule.

Explanation: Current fees have not been revised since 1992 and are no longer consistent with, for example, fees charged by provincial registries for similar services. These fees should be updated to better reflect the market, actual costs and changing usage requirements.

Subject: Related-Party Transactions Involving Derivatives

Amendment: Ensure that related-party transactions include transactions involving derivatives where the underlying security is of a related party.

Explanation: Derivatives can be used to affect the value of the security of a related party. A related party may influence a financial institution to enter into these transactions when the financial institution would not normally do so.

Subject: Vesting of Assets Acquired through Nominal Value Related-Party Transactions – Foreign Insurance Companies

Amendment: Remove exemption for immaterial transactions by foreign insurance companies from the prohibition against vesting in trust any assets if acquired through a transaction under the self-dealing regime.

Explanation: The immateriality test is not appropriate for foreign companies, since they are not required to have conduct review committees to set immateriality criteria.

Subject: Restrictions on Subsidiaries of Holding Companies Transacting with Affiliates

Amendment: Remove immaterial transactions from the calculation of the 5 per cent limit for asset transaction approvals with non-federally regulated related parties.

Explanation: The inclusion of immaterial transactions in the calculation of this limit is inconsistent with other sections of financial institutions legislation where immaterial transactions are excluded. Keeping track of these transactions is onerous and does not serve any significant purpose.

Subject: Unclaimed Balances in the *Canada Gazette*

Amendment: Remove requirement for banks to send information to OSFI on unclaimed deposits and bills of exchange after nine years of inactivity with respect to an account or instrument and remove OSFI's requirement to publish this data in the *Canada Gazette*.

Explanation: Banks send information on unclaimed balances to OSFI after nine years of inactivity. OSFI then publishes this data in the *Canada Gazette*, but few consumers read the *Canada Gazette*. Further, this information is available on the Bank of Canada's website after the 10th year of account inactivity. Therefore, the publication of data in the 9th year is redundant and not cost-effective.

Subject: Signature Cards for Unclaimed Balances

Amendment: Amend the *Bank Act* to require banks to provide the Bank of Canada, upon request, with signature cards associated with transferred unclaimed balances.

Explanation: The *Bank Act* requires banks to provide account information to the Bank of Canada upon the 10th year of inactivity, when associated unclaimed balances are transferred to the Bank of Canada. The Bank of Canada relies on this information to help verify that claimants have rights to the balances. Signature cards are not presently listed among the documents banks are required to provide to the Bank of Canada.

Subject: Time Limits on Unclaimed Balances

Amendment: Increase from 20 to 40 years the expiration on the Bank of Canada's liability on smaller value unclaimed balances and raise the threshold for such unclaimed balances from $500 to $1000. In addition, the amendment would set out a 100-year expiration on the Bank's liability for unclaimed balances above $1000.

Explanation: At present, while the Bank of Canada's liability for unclaimed balances below $500 expires 20 years after the last known transaction or statement of account, the Bank is required to hold in perpetuity all balances over $500—some of which have been unpaid for over 100 years. To ensure that unclaimed balances are reasonably made available to the heirs of the original owner, it is proposed that the expiry be placed at 100 years after the account has been transferred to the Bank of Canada

Subject: Foreign Insurance Companies Insuring in Canada Risks

Amendment: Clarify the application of Part XIII of the *Insurance Companies Act*.

Explanation: Inconsistencies in the terminology used in Part XIII of the *Insurance Companies Act* make it unclear whether the part governs all risks in Canada insured by a foreign insurer or risks insured by a foreign insurer in carrying on its insurance business in Canada.

Consumer Related Amendments

Subject: Complaints Against Foreign Insurance Companies

Amendment: Require that the officers or employees and the independent complaint handling bodies, who are responsible for complaints against foreign insurance companies, reside or be located in Canada.

Explanation: The amendment will harmonize the *Insurance Companies Act* (ICA) and the *Bank Act* with respect to procedures for dealing with complaints and the obligation to be a member of a complaints body for authorized foreign banks and foreign insurance companies. For consistency, the ICA will be amended to specify that the officers or employees responsible for handling complaints have to reside in Canada and require foreign insurance companies to be a member of an independent complaint handling body in Canada.

Subject: Disclosure at all Branches

Amendment: Clarify that the requirements to disclose information in branches, such as the prohibition on coercive tied selling, apply only to branches that are open to the public.

Explanation: Deposit-taking financial institutions are required to disclose such information as the prohibition on coercive tied selling at all of their branches. A branch is defined broadly under financial institutions legislation and can include the head office or any other office. The requirement to disclose information should apply only to branches that are open to the public.

Subject: Pre-closure Meeting

Amendment: Clarify that the purpose of the branch pre-closure meeting is to exchange views about the closing or cessation of activity, as well as to discuss alternative service delivery and measures to help customers adjust to the changes.

Explanation: The branch closure regime is intended to facilitate adjustment to branch closures, while ensuring the ability of the financial institutions to pursue efficiencies and adapt to changes. Questions relating to alternative service delivery and measures to help customers adjust to changes are integral to facilitating adjustment to branch closures. This amendment will clarify the legislation in respect of the branch closure regime.

Subject: Identification

Amendment: Amend the *Access to Basic Banking Services Regulations* to add territorial health insurance cards and the Citizenship and Immigration Canada Form IMM 5292 as permitted identification for account opening.

Explanation: The amendment will add territorial health insurance cards to the schedule in the regulations. Provincial health insurance cards are already included. In addition, Citizenship and Immigration Canada Form IMM 5292, which is the confirmation of permanent residence form, will be added.

Subject: Disclosure of All Charges and Lists of Charges

Amendment: Require deposit-taking financial institutions to disclose all charges applicable to personal deposit accounts and to maintain a list of all charges applicable to deposit accounts at physical points of services where consumers open deposit accounts or where services are offered in respect of deposit accounts through a natural person.

Explanation: To ensure consistency with provisions of the financial sector statutes regarding account opening, the amendment will require banks to disclose all charges and to maintain a list of all charges at physical points of services where they open deposit accounts or offer services in respect of deposit accounts through a natural person.

Subject: Commissioner's Authority to Exempt or Vary Notice Requirements

Amendment: Allow the Commissioner to exempt or vary the notice of branch closure requirement when the giving of such notice, as provided under the statutes or regulations, would cause undue damage to the financial institution.

Explanation: This would allow the Commissioner wider discretion to exempt from or vary the notice requirement in circumstances beyond the control of the institution or when there is no significant impact on consumers, e.g. the failure of a newspaper to print the notice of branch closure on the right day.

Subject: Electronic Notification of Inactive Accounts

Amendment: Require banks to send notification of an inactive deposit or instrument by electronic mail when the bank has an email address for the customer.

Explanation: Presently banks are required to provide notification in writing to account holders at their recorded address when their accounts have been inactive for two years and five years. To better ensure account holders are notified of the inactive account, banks will be required to provide notification by electronic means, if the bank has an electronic address for the account holder, in addition to providing the written notification to the person's physical address.

Subject: Notification of Inactive Accounts Transferred to the Bank of Canada

Amendment: Require banks to send notification to an account holder at the end of the 9^{th} year of inactivity indicating that the balance in the account will be transferred to the Bank of Canada at the 10^{th} year of inactivity. The requirement would also include information on how to claim the balance and would be sent electronically if an email address is available.

Explanation: This will ensure that account holders are made aware that inactive accounts will be transferred to the Bank of Canada in the 10^{th} year. Banks will be required to provide notification by electronic means, where the bank has an electronic address for the account holder, as well as by written notification to the person's physical address.

Cooperative Credit Associations Act Amendment

Subject: Continuance – Share Conversion

Amendment: Include in the *Cooperative Credit Associations Act (CCAA)* a provision to the effect that upon continuance, common shares are deemed to be membership shares.

Explanation: This new provision will provide clarification about the consequences of continuance for common shares of a continued corporation.

Canadian Payments Act Amendments

Subject: Citizenship Requirement for Canadian Payments Association (CPA) Directors

Amendment: Amend the *Canadian Payments Act* (CP Act) to specify that three quarters of directors on the CPA Board must be Canadian citizens ordinarily resident in Canada.

Explanation: The CP Act currently requires that all directors on the CPA's Board of Directors be Canadian citizens ordinarily resident in Canada. Reducing the requirement to three-quarters will facilitate representation on the CPA Board of Directors of authorized foreign bank branches and foreign bank subsidiaries, which are eligible to be CPA members.

Subject: CPA Board of Directors

Amendment: Amend the CP Act to clarify that the CPA Board of Directors can still act despite a vacancy and clarify that ministerial appointees to the CPA Board of Directors continue to act until replaced. The amendment would include removing the spent provision in the CP Act that sets out the initial terms in office for the ministerial appointees to the CPA Board of Directors.

Explanation: This will clarify that the CPA Board of Directors can continue to act in the event that there is a vacancy among elected directors and an alternate director for that seat is not available. In addition, given that directors appointed by the Minister do not have alternates, a situation could exist where one of these directors is unable to finish his or her term and a replacement has not yet been appointed. In the event of a delay in the ministerial appointment process, ministerial appointees to the CPA Board of Directors would continue to act until replaced.

Subject: Stakeholder Advisory Council Appointment Process

Amendment: Amend the CP Act to explicitly authorize the CPA Board of Directors to create by-laws regarding the nomination and selection process of Stakeholder Advisory Council members.

Explanation: While the CP Act establishes the Stakeholder Advisory Council, outlines its mandate and sets out how Stakeholder Advisory Council members are appointed, it does not explicitly stipulate that the CPA has the authority to set out the nomination and selection process for Stakeholder Advisory Council members in CPA by-laws.

Subject: Compliance and Penalties

Amendment: Amend the CP Act to enhance the CPA's ability to ensure compliance, including clarifying that the CPA has authority to impose monetary penalties, such as interest and restitution payments, and non-monetary penalties, including the suspension of membership rights. The CP Act would specify that advance notification to the Minister is required for a suspension to become effective. The amendment will also clarify that by-laws can include a limited liability provision.

Explanation: While the CP Act grants the CPA the authority to make by-laws establishing penalties to be paid by members for the failure to comply with by-laws and rules and procedures to impose penalties, it does not explicitly state that the CPA has the authority to impose monetary penalties such as interest and restitution payments and non-monetary sanctions such as suspending membership rights. The amendment will also clarify that there is proper authority under the CP Act to enable exculpatory provisions, which are necessary for the CPA to fulfill its duties under applicable by-laws and to mitigate potential risk.

Subject: By-law Approval Process

Amendment: Amend the CP Act to transfer the statutory CPA by-law approval responsibility from the Governor in Council to the Minister.

Explanation: The amendment will help streamline and expedite the approval process given the Minister's current statutory oversight responsibilities over the payment system, his or her involvement in the by-law approval process, and timeliness.

Subject: General Manager

Amendment: Amend the CP Act to allow the General Manager to designate others to act in his or her absence, and replace the term "General Manager" in the CP Act with the term "President." For clarity, the French equivalent of the title "Chairperson" will be amended from "Président" to "Président du conseil".

Explanation: This will allow the General Manager to delegate authority for contingency reasons to senior CPA officials such as the Vice President General Counsel and Corporate Secretary during his or her absence. The official title "President" is currently being used in reference to the management head and chief executive officer of the CPA and reflects the title being used for similar positions in the industry.

Subject: Effective Date of Membership to the CPA

Amendment: Amend the CP Act to specify that CPA membership for banks becomes effective when a bank receives its order to commence and carry on business. For members other than banks, specify that their membership take effect on the day the membership application is approved by the CPA Board of Directors.

Explanation: The CP Act currently does not address the issue of when CPA membership becomes effective. With respect to banks, the CP Act simply stipulates that a bank must be a CPA member and the CPA general by-law states that a bank's membership is effective on the day it comes into existence under its letters patent. The Superintendent of Financial Institutions issues a bank's order to commence and carry on business after the Minister issues the letters patent. Given the fact that a bank cannot operate until it receives both approvals, the amendment will improve the CPA's governance and operations from a membership perspective. Regarding non-bank members, the clarification that membership takes effect once the CPA Board of Directors approves the membership application is consistent with existing provisions in the CPA general by-law.

Subject: Statements of Principle, Standards and Orders

Amendment: Amend the CP Act to clarify that statements of principle, standards and orders made under a by-law are not statutory instruments.

Explanation: Since these documents are not statutory instruments, the amendment will clarify that they should not be interpreted as such.

Subject: Delegation Authority

Amendment: Amend the CP Act to provide the Minister of Finance with the authority to delegate powers under the CP Act to a minister or secretary of state.

Explanation: Since delegating statutory powers to a minister or secretary of state must be done by statute, the amendment will clarify the Minister's authority to do so. If the Minister decided to delegate certain powers under the CP Act, it could allow him or her to focus on more pressing issues. Similar provisions are found in other financial institution statutes such as the *Bank Act*, the *Cooperative Credit Associations Act*, the *Trust and Loan Companies Act* and the *Insurance Companies Act*.

Payment Clearing and Settlement Act Amendment

Subject: Undesignation of Payments Systems

Amendment: Amend the *Payment Clearing and Settlement Act* (PCSA) to indicate that the Governor of the Bank of Canada has the authority to undesignate payment systems that no longer pose a systemic risk, with the Minister's approval.

Explanation: The PCSA currently provides the Governor of the Bank, subject to the approval of the Minister, with the authority to designate payment systems that pose a systemic risk. However, the PCSA does not explicitly state that the Governor has the authority to undesignate payment systems that no longer pose a systemic risk.

Canada Deposit Insurance Corporation (CDIC) Act Amendments

Subject: Definition of "Subordinated Note" and "Subordinated Shareholder Loan"

Amendment: Delete these two definitions.

Explanation: These terms are no longer used in the CDIC Act.

Subject: Use of the Term "Transferred Deposit"

Amendment: Delete the word "transferred" from the term "transferred deposit."

Explanation: This will clarify that a payout made to a depositor of a failed institution through a deposit at a separate institution may be subject to terms and conditions that are different from those associated with the original insured deposit.

Subject: Use of the Phrase "Right to a Hearing"

Amendment: Replace the phrase "right to a hearing" with the phrase "right to make written representations" in certain sections of the CDIC Act.

Explanation: The CDIC Act should be amended to be consistent with the terminology used in other federal financial institutions statutes.

Subject: Tranching of Deposit Insurance Payments

Amendment: Enable CDIC to make payments in one or more instalments to provide the flexibility of making preliminary payouts to depositors.

Explanation: This change will clarify that CDIC can effect tranched payments, thereby providing liquidity faster for the benefit of depositors.

Subject: Determination of Total Insured Deposits

Amendments: Provide additional flexibility and clarification to CDIC and member institutions with respect to the calculation of insured deposits.

Explanation: The change will reduce regulatory burden by allowing the use of a proxy to estimate insured deposits.

Subject: Timing and Calculation of Payment of First Premiums for Deposit Insurance by Member Institutions

Amendment: Simplify and streamline the timing and calculation for the payment of first premiums.

Explanation: This change will establish a more flexible, administratively efficient system for the payment of first premiums for member institutions.

Subject: Ability of Member Institutions to Opt out of Deposit Insurance

Amendment: Replace the word "bank" with the term "federal institution."

Explanation: All CDIC member institutions, including trust and loan companies and cooperative credit associations, should have the ability to opt out of deposit insurance (provided that they meet the required conditions). Consequential amendments to other federal financial institution legislation will be made.

Subject: Process for Becoming a CDIC Member Institution

Amendment: Clarify the processes under which new federal financial institutions taking retail deposits are automatically granted CDIC membership and under which existing federal financial institutions may opt in to CDIC membership should they wish to start taking retail deposits.

Explanation: The amendments will clarify which federally regulated financial institutions are eligible for automatic CDIC membership and how existing opted-out institutions are able to acquire CDIC membership.

Office of the Superintendent of Financial Institutions (OSFI)-Related Amendments

Subject: False or Misleading Information to OSFI

Amendment: Amend the federal financial institutions legislation to address the provision of false or misleading information knowingly provided to OSFI.

Explanation: It is not currently an offence under the federal financial institutions legislation for individuals or institutions to knowingly provide false or misleading information to OSFI. The system of regulation in Canada relies on the accuracy of information provided to regulators. This change would also better align federal legislation with provincial legislation, which often includes sanctions for the provision of false or misleading information.

Bank of Canada Act Amendments

Subject: Information Gathering

Amendment: Clarify that the Bank of Canada is entitled to access information on non-financial institutions to support its monetary policy function and/or its role in promoting the Canadian financial system's stability and efficiency. . The authority will be limited to data that is already reported to Statistics Canada and will be sourced directly from Statistics Canada.

Explanation: This will enable the Bank of Canada to have easier access to data collected by Statistics Canada on firms other than federally regulated financial institutions, thereby improving its ability to assess risks and vulnerabilities in the financial system and supporting its monetary policy function.

Subject: Weekly Balance Sheet

Amendment: Remove the requirement in the *Bank of Canada Act* to prepare and transmit to the Minister a weekly balance sheet and replace it with a requirement that the Bank of Canada publish weekly statistics on assets and liabilities of the Bank of Canada.

Explanation: The requirement to submit a weekly balance sheet is no longer necessary because the financial information contained in the balance sheet is published every Friday by the Bank of Canada in the form of the Weekly Financial Statistics.

Financial Consumer Agency of Canada Act (FCAC) Amendment

Subject: Maximum Penalty for a Violation

Amendment: Amend the FCAC Act to increase the maximum penalty to $200,000 for a violation that is committed by a financial institution.

Explanation: This will provide the Commissioner with a wider range of possible penalties. The maximum penalty for a violation by a financial institution would be increased from $100,000 to 200,000. A maximum penalty of $200,000 is in line with the maximum penalties provided for in other consumer protection and administrative money penalty regimes.

Other Related Amendments

Subject: Mandatory Retirement Age for the Bank of Canada Governor, Deputy Governors and Directors on the Board as well as for the CDIC Chairperson

Amendment: Remove the mandatory retirement age.

Explanation: The objective is to allow experienced Canadians to contribute to our society for as long as they are willing. The proposed amendments are consistent with this objective.

Subject: *Winding-up and Restructuring Act* (WURA) and Deemed Insolvency for Incomplete Financial Institutions Restructuring Provisions (FIRP) Transactions

Amendment: Add reference to a receivership FIRP in WURA.

Explanation: This change will ensure that an incomplete FIRP receivership provides grounds for a winding-up.

Subject: Nuclear Insurance

Amendment: Make amendments to reflect the intent of the exemption provision for nuclear insurance in the *Insurance Companies Act* (ICA).

Explanation: The amendment will correct a disparity between WURA and the ICA pertaining to the availability of assets in Canada of a foreign company.

Subject: Assuris Designation Limitation

Amendment: Update the criteria in the *Insurance Companies Act* (ICA) related to the assessment that a compensation association must have the authority to levy on its members.

Explanation: The ICA provides that a compensation association shall not be designated unless, in the opinion of the Minister, it has the authority to levy an assessment on each of its members of not less than 85 one hundredth of one per cent per member's average annual premium income from policies that are eligible for compensation from the association. This method appears to be outdated, as average annual premiums are no longer used in all cases because they are not the best proxy for the relative size of a company and potential risk to the system.

Subject: Taking Control of a Canadian Branch

Amendment: Amend the *Bank Act* and *Insurance Companies Act* to provide that the Superintendent may take control of a Canadian branch where the authorized foreign bank or its holding body corporate or the foreign insurance company or its holding body corporate is made subject to a liquidation or bankruptcy order. Amend the *Bank Act* to be consistent with the *Insurance Companies Act* with respect to the location where bankruptcy or insolvency proceedings have been commenced.

Explanation: Currently, the reference in the *Bank Act* and *Insurance Companies Act* is only to the holding body corporate. The proposed amendment includes a direct reference to the authorized foreign bank and foreign company. The amendment would provide consistency between the Acts in terms of the geographical location where proceedings have been commenced.

Subject: Resetting Sunset Date in the Financial Institutions Statutes and Extending Coverage of Automatic Extension

Amendment: Reset the sunset date to five years after the coming into force of the new statutes and extend the automatic extension period, triggered by the dissolution of Parliament, to cover the optional Governor in Council (GIC) extension period.

Explanation: This amendment will reset the five-year sunset date that was amended by Budget 2006. It will also help ensure that the FI statutes do not lapse in the event that Parliament dissolves during the GIC extension period.

Subject: Participating Accounts under the *Insurance Companies Act*

Amendment: Amend the Act to streamline the provisions in respect of payments to shareholders and transfers from participating accounts.

Explanation: The Act will be amended to allow only transfers pertaining to the current financial year to be made and disallow retroactive transfers, and clarify that transfers of amounts that can reasonably be attributed to sources not related to the participating policies are only intended to cover situations where an insurance company injects its own funds into a participating account to ensure its viability or to meet dividend expectations. The Act will also be amended to include a definition of a "closed block".